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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1455 OF 1999
IN
SUIT NO. 2606 OF 1999

Smt. Manorama Omprakash
Ralhan Plffs.
vs.
Mr. Munesh Ralhan alias
Ricky Ralhan and anr. Defnds.

NOTICE OF MOTION NO. 2873 OF 1999
IN
SUIT NO. 2606 OF 1999

Smt. Manorama Omprakash
Ralhan Plffs.
vs.
Mr. Munesh Ralhan alias
Ricky Ralhan and anr. Defnds.

NOTICE OF MOTION NO. 2700 OF 2000
IN
SUIT NO. 3748 OF 2000

Rupali Shah and anr. Plffs.
vs.
Mr. Munesh Ralhan alias
Ricky Ralhan and anr. Defnds.

Ms. Kavita Shah for the plaintiffs in Suit No. 2606 of 1999 and for defendant no.2 in Suit no. 3748/00 and defendant no.1 in T.S.77/00.

Mr. Anuj Narula i/b. Jhangiani Narula and Associates and for Defendants in Suit no. 2606/99 and T.S.77/00 and for defendant no.2 in Suit 3748/00.

S.R. Rajguru for defendant no.3 in Suit no. 3748/00.

M.P.S. Rao a/w. Madhavi Diwan and Naushad Engineer i/b. Desai and Diwanji for defendant no.2 in Suit no. 2606/99, Plaintiff in Suit no. 3748/00 and plaintiff in T.S. 77/00.

D.R. Dhurat, 1st Asst to C.R.

CORAM: S.U. KAMDAR, J.
DATE : 27th October, 2005.

JUDGMENT :

1. All the three motions are in respect of the estate of the deceased O.P. Ralan and the relief sought therein are overlapping to each other and are therefore clubbed together and disposed off by this common judgment. For the sake of brevity and convenience the parties in the judgment are described as appearing in the Notice of Motion No. 2700 of 2000 in Suit No. 3748 of 2000. Some of

the material facts of the present case are as under
:

2. O.P. Ralan was a well known film producer. He expired on 28.4.1999 leaving behind his last will and testament dated 4.9.98. The said will is supposed to have been witnessed by a surgeon, General Physician and a chartered accountant and the same is registered. It is the case of the plaintiff that under the will she was entitled to all the property. The plaintiff is the daughter of the said late O.P. Ralan. She has also been appointed as an executor of the said will alongwith her husband. Under the said will dated 4.9.98 the plaintiff is claiming the entire estate of the deceased as a sole beneficiary. The defendant no.1 and 2 are the son and the wife of the said deceased. According to the plaintiff there were bitter disputes between the deceased and the defendant no.2 and there was a separation of the defendant no.2 from the said deceased. It is also the case of the plaintiff that during the lifetime of the deceased there was a litigation between the

defendant no.1 and the said deceased and that various attempts were made by the defendant no.1 to usurp the properties of the said deceased and even after the death he has been intermedling with the estate of the said deceased. It is further the case of the plaintiff that deceased apart from leaving behind a large part of the various immovable properties also left behind large income tax liability and the Income tax authorities are threatening to dispose off the various properties for recovery of the tax dues.

3. The said deceased has left the following properties :

1) A flat admeasuring 2400 sq.ft in the building known as Sweet Home situated at Pali Hill Road, Bandra (W), Mumbai-50. The said flat as of today stands in the name of the second defendant. However the plaintiff is claiming that the said flat belongs to the deceased and not the 2nd defendant.

2) A flat admeasuring 2500 sq.ft being flat no. 503 in Ashadeep building, 9, Hailey Road, Connaught place, New Delhi which is also standing in the name of the second defendant and is in occupation of the first defendant. The plaintiffs are also claiming that the said flat also belongs to the said deceased.

3) A bungalow admeasuring about 3400 sq.ft by the name of Ashoka House Bungalow situated at no.8, Jolly Maker I Premises Cooperative Soc. Ltd at Cuffe Parade, Mumbai-400 005.

4) A flat admeasuring about 1000 sq.ft approximately being flat no.138 situated at Nehru Nagar Co-operative Hsg. Soc Ltd, Juhu Tara Road, Santa Cruz (W), Mumbai-64 which is staining in the name of the firm of M/s. Ralhan Productions of which the said deceased was the sole proprietor,. The said flat is in the possession of the brother of the deceased.

5) Land admeasuring about 3 Hectares 56 Aars bearing GAT No. 117 situated at Village Deharjee, Taluka- Jawahar, District Thane, Maharashtra.

6) Tenancy rights in respect of the said flat admeasuring 1050 sq. ft in building known as Bhagwan Niwas situated at Khar (W), Mumbai-52 of the plaintiff herein.

7) Ancestral immovable property in Village Banga, Dist. Hoshiarpur, Punjab.

4. It is the case of the plaintiff that there are various movable properties also left behind by the said deceased particularly various film rights including the copy rights therein which can be exploited and income therefrom can be generated. According to the plaintiff there are various cine equipments which are lying in the Mahalaxmi

premises which also can be used or sold or given on hire and an income can be generate therefrom.

5. In respect of this estate a bitter dispute is in progress between the plaintiff on one hand and the defendant no.1 and 2 on the other hand. The plaintiff claims that the large amount of the properties of the deceased has been bequeathed to her under the said will dated 4.9.1998. The said will is the subject matter of probate in Testamentary Petition being No. 535 of 1999. The defendant no.,2 has also filed a suit being an Administration Suit No. 2606 of 1999 and the plaintiff has also filed another suit being Suit No. 3748 of 2000. The Suit No. 3748 of 2000 is inter-alia filed for the reliefs that the property namely 'Ashoka House Bungalow' situated at No.8, Jolly Maker 1 Co-operative Premises Soc, Ltd, Cuffe Parade, Mumbai-5 belong to the deceased and that the defendants have no right title and interest of any nature whatsoever therein. Further reliefs are also sought that the first defendant should be

ordered and directed by mandatory injunction of this court to remove all his belongings from the dining room of the said Ashoka House and that he should be restrained from entering into the said bungalow. A further declaration has been sought that assets of the company known as 'M/s. Ralhan Productions' and cine Equipments and the properties of the said firm exclusively belonged to the said deceased including the exploitation rights of the said Motion Pictures produced by him. Various other reliefs are also sought in the said suit which has been filed by the plaintiff who is the daughter of the said deceased.

6. The defendant no.2 who is the widow of the said deceased is inter-alia seeking the reliefs in her suit for declaration that the said deceased died intestate on 20.4.99 and the plaintiff and the defendant no.1 and 2 are entitled to the share in the aforesaid properties of the said deceased. A further declaration is sought by defendant no.2 that she is entitled to one-third share in the estate of the said deceased. Further directions

are also sought that the estate of the deceased must be administered by this court and pending the said reliefs various other interim orders are sought such as Receiver and injunction of the properties of the said deceased. These three Notice of Motions namely Notice of Motion no. 1445, 2770 and 2873 are taken out in these aforesaid two suits. Notice of Motion No. 1445 is taken out by the widow whereas Notice of Motion No. 2700 of 2000 has been taken out by the plaintiffs daughter and Notice of Motion No. 2873 of 2001 has been initiated by the 2nd defendant who is the son.

7. At this interim stage essentially I am required to protect the assets of the deceased so that the same is available for distribution in accordance with the final decision arrived in the said testamentary petition and or the aforesaid two suits. Thus it is necessary that the aforesaid properties of the deceased are protected and reliefs ought to be oriented towards the said object. In so far as the bungalow is concerned which is at Cuffe Parade there has already been a

history which is required to be set out before passing any order. It is the case of the plaintiff that after being separated from the 2nd defendant the deceased was residing alone at the said Ashoka House Bungalow, Cuffe Parade. Sometime in or about October 1995 fire broke out in the said bungalow and interiors were destroyed. Thereafter it is the case of the plaintiff no.1 that the said deceased was residing with her and she has been looking after the said deceased. Sometime in or about June 1998 it is the case of the plaintiff that the defendant no.1 came down from Delhi with an intention to stake claim on the said bungalow and in July 1998 the defendant no.1 broke open the lock of the said Ashoka house forcibly and illegally entered into and took over possession thereof. On 7.7.98 the deceased filed a complaint with the police station that the defendant no.1 is trying to break open the lock and enter into possession thereof. On 13.7.98 deceased filed another complaint inter-alia recording that the defendant no.1 with one Mr. Virendra Kumar Tuli has broke open the lock of the said bungalow and has entered

into possession of the said premises. The deceased thereafter moved the City Civil court at Bombay and filed a suit being Suit No. 3582 of 1998 inter-alia seeking interim order of injunction restraining the defendant no.1 from entering into the bungalow and disturbing his possession. On 15-16/7/98 the defendant no.1 at the hearing of the ad-interim order deposited one set of keys of the bungalow in court. It is the case of the plaintiff that on the night of 16.7.98 taking use of the duplicate keys the defendant no.1 entered into the said premises and pushed his belongings and articles in the said premises. On 17.7.98 the aforesaid fact was supposed to have been recorded by the advocate of the deceased inter alia stating therein that the said defendant no.1 has broken open the lock on the said night. On 17.7.98 ad-interim order was passed by the city civil court restraining the defendant no.1 from entering into Ashoka House. An appeal was preferred against the said order being Appeal No. 673 of 1998 and in the said proceedings the defendant no.1 has raised the claim of tenancy in respect of the said property.

However on 20.7.98 the court declined to interfere with the ad-interim order passed by the city civil court save and except expediting the hearing of the notice of motion. on 4.8.98 in a reply filed by the defendant no.1 he has put forward the case of tenancy. On 7.8.98 the said notice of motion no. 4077 of 1998 was disposed off by the city civil court and the city civil court prima-facie gave a finding that the plea of tenancy is based on fabricated documents. Appeal was preferred therefrom being Appeal no. 801 of 1998. On 25.9.98 the said appeal from order against the order passed in the notice of motion came up for hearing before the learned Single judge and on 29.9./98 the said appeal was admitted and by an ad-interim order it was provided that the deceased could occupy the first floor and a ground floor bedroom, while defendant no.1 will be allowed to use the living and dining room on the ground floor for business purposes. On 21.11.98 the Commissioner took inventory of the various belongings of the defendant no.1. On 10.2.99 the said appeal from order no. 801 of 1999 was

disposed off by the High Court by directing that the defendant no.1 should not enter into the said bungalow. However the defendant no.1 was allowed to store his personal effects in the dining room of his bungalow under his lock and key. On 20.4.99 the said O.P. Ralan expired. It is the case of the plaintiff that on 21.4.99 i.e. on the next day of the death of the deceased the defendant no.1 entered into the said premises namely Ashoka bungalow and took possession of the said bungalow as if he was always in possession of the same. On 21.4.99 the plaintiff lodged a police complaint. On 3.5.99 the plaintiff filed a present probate petition being Probate Petition no. 535 of 1999. Similarly around the same time defendant no.1 also filed a suit in this court being administration Suit No. 2606 of 1999 inter-alia contending that the said deceased expired intestate and each of them are entitled to their respective shares as per intestate succession. A notice of motion was taken out being Notice of Motion no. 1570 of 1999 in the probate petition No. 535 of 1999. On 10.5.99 an ad-interim order was passed in respect of the said

bungalow. However the dispute in respect of the said bungalow did not get resolved with the orders passed therein. Thereafter some time in or about April 2000 defendant no.1 filed a RAD suit being Suit No. 587/1086 of 1999 in the small causes court inter-alia seeking a declaration that he is the tenant of the Ashoka House originally belonging to the deceased. It is further the case of the plaintiff that sometime in or about April or May 2000 the Income Tax authority raised the demand for the income tax liability of the deceased for an amount of Rs.1,52,59,988/-. The said demand included a penalty of Rs.7525/- per day on the estate of the deceased. It is the case of the plaintiff that the said income tax liability was required to be paid off and therefore necessary orders for raising funds from the said property were required to be passed. On 22.5.00 the income tax authority issued a demand notice. On 18.9.00 the income tax authority threatened to auction the said bungalow if the arrears are not paid by the estate of the deceased. On 28.8.00 even the bank accounts were attached by the said income tax

authorities. Ultimately the notice of motion was taken out being Notice of Motion No. 2897 of 2000 seeking injunction against the income tax authority from auctioning the said property. On 5.10.2000 the learned single judge refused to pass any order against the income tax authorities because they were not parties to the said suit. In October 2000, the plaintiff moved a chamber summons being Chamber summons no. 1209 of 2000 inter-alia seeking to join the income tax authorities as a party to the suit and also sought an injunction against the auctioning of the said bungalow. On 9.10.2000 another learned single judge of this court passed an order restraining the said income tax authorities from auctioning the said bungalow. Some time in or about October, 2000 the plaintiff moved a review petition for review of an earlier order dated 10.5.99 and 6.10.99 in the light of the huge income tax liability which was threatening the sale of the property. Subsequently the income tax authorities contested the said chamber summons and ultimately by an order dated 1.12.2000 the income tax authorities were joined as parties to the said

proceedings. In the aforesaid circumstances on 23.3.2001 the plaintiff moved for further ad-interim reliefs in the present notice of Motion No. 2700 of 2000. By an order dated 23.3.2001 the learned single judge appointed a receiver in respect of the bungalow inter-alia with further directions to the defendant no.1 to remove his belongings which were stored in one room of the bungalow and further permitted that the said bungalow be given on leave and licence basis and the compensation received therefrom should be paid directly to the income tax department towards the dues of the income tax of the said deceased. On 27.7.2001 the plaintiff filed a Writ Petition being Writ Petition No. 1641 of 2001 challenging the income tax liabilities. However by an order dated 30.7.2001 the Writ petition which was filed was dismissed. In the mean time the defendant no.1 preferred an appeal against the order of the learned single judge appointing receiver in respect of the said bungalow and the division bench by an order and judgment dated 30.7.2001 dismissed the appeal and confirmed the order passed by the learned single

judge. On 5.9.2001 the defendant no.1 sought a review of the said order dated 30.7.2001 rejecting the said Writ petition. However the said review petition was dismissed by an order dated 19.10.2001. On 23.10.2001 the learned single judge of this court directed the first defendant to remove his belongings from the bungalow immediately so that the bungalow can be available for letting out on leave and licence basis. Accordingly the court receiver invited the offers and an offer was received from IDBI which was accepted by this court by an order dated 8.12.2001. The defendant no.1 further challenged the said order appointing the court receiver of the said bungalow which was passed by the learned single judge and was confirmed by the Division Bench and SLP therefrom was dismissed by an order dated 14.1.2003. Subsequently on 1.11.2003 the said bungalow was given on leave and licence basis to one Gobind Daryanani for 11 months. On the expiry of the said 11 months period the bungalow has been given on leave and licence for 33 months to one M/s. ASC Enterprises. On 4.10.2004 the suit filed by the

defendant no.1 claiming tenancy in respect of Ashoka House bungalow has been dismissed by small causes court for non-prosecution.

8. The prayers in the present Notice of Motion No. 2700 of 2000 is to confirm the ad-interim order passed by this court and to continue the leave and licence arrangement with the third parties under the hands of the Court Receiver. It has been further prayed that the money received therefrom be paid over towards the income tax liabilities. It is the case of the plaintiff that pursuant to the leave and Licence arrangement entered into by the court receiver a large amount has been recovered and has been paid over to the income tax authorities towards the discharge of the income tax dues and liabilities of the deceased but still huge amount of income tax liability is outstanding. It is also the case of the defendant that negotiations for one time settlement with the income tax authorities for various concession are in progress . On such concessions being granted the liabilities of the income tax dues of the

deceased would be substantially reduced by virtue of the said proceedings.

9. On the other hand the defendant no.1 in his notice of motion namely Notice of Motion no. 2873 of 2001 has sought that the defendant no.1 should be allowed to use, occupy and possess the premises namely Ashoka House Bungalow in accordance with the tenancy agreement signed in his favour by the deceased.

10. The learned counsel appearing for the plaintiffs has on the one hand contended that the ad-interim orders passed in this motion in respect of the said bungalow should be confirmed because it is in the interest of the estate that the property is given on leave and licence basis so that income can be generated therefrom and the said money which is available can be utilised for the purpose of discharging all the tax liabilities. It has been further contended that the defendant no.1 should be given no relief as he has sought to set up an

adverse title against the deceased by claiming tenancy during his lifetime. It has been further contended that no relief should be granted to the defendant No.1 because during the lifetime of the deceased himself the defendant no.1 has broke open the locks of the said bungalow and has entered into the possession of the said premises. It has been contended that the said case of tenancy put forward by the defendant no.1 is bogus and further that once the suit is dismissed for non-prosecution his claim for tenancy has come to an end.

11. On the other hand the larned counsel for the defendant no.1 who has been supported by the learned counsel for defendant No.2 also has contended that prior to the receiver being appointed of the said bungalow the defendant no,.1 was found in possession of the premises and that he has been dispossessed pursuant to the ad-interim orders passed by this court in the present proceedings and therefore while confirming the ad-interim orders I must take into consideration that at the interim stage this court ought not to

disposes the persons who are found in possession of the said premises and status quo should be retained as on the day when the ad-interim orders are passed. Learned counsel for the defendant no.1 has also purportedly contended that the bungalow has been substantially damaged by the Plaintiffs and/or Licencee. It has been contended that after the court receiver visited the said premises he has made a report stating that the internal walls thereof are demolished and thus it has been contended that the plaintiff has put such a person in possession of the premises who are damaging the said property and therefore such agency should not be permitted to continue.

12. Before I deal with the rival submission of the parties in respect of the said bungalow it is necessary to point out the conduct of the court receiver's office is most deprecable. The proceedings were before me and on the last four occasions the matter was substantially heard in respect of the said bungalow. The matter was adjourned on one pretext or another on earlier

occasions. During the time when matter was heard by the court a visit is made by the Court Receiver to the bungalow for purported inspection thereof and report is prepared by him of so called damage to the said bungalow by the Agent. The said report is purportedly handed over to the defendant no.1 to utilise the same in present proceedings. The Court Receiver being aware of the present proceedings being heard by the Court ought not to have taken any such step without seeking leave of the Court. I am of the opinion that the Court Receiver cannot act in a manner so as to create evidence for either of the parties for the purpose of utilisation thereof in the course of the proceedings having known the mind of the court that the court is not inclined to disturb the possession of the Court Receiver. In the aforesaid circumstances I am of the opinion that the court receiver ought not to have taken visit of the said premises and prepare a report and hand over copy thereof to the defendant no.1 so as to enable him to utilise the same during the course of the hearing of the present proceedings.

13. I find that the Receiver's office has acted in a manner which is not appropriate. I find that it is necessary that the court receiver's office be directed that in the future if appropriate steps are required to be taken and if the court is already in the progress of the hearing of the proceedings concerning the said properties then before taking any steps a prior permission ought to be taken from the court by the Court Receiver.

14. Be that as it may be, in so far the original contention of the merits of the case are concerned I am of the opinion that in the totality of facts and circumstances of the case the ad-interim orders must be confirmed and the court receiver should be appointed as the receiver of the said bungalow. The ad-interim order is in the interest of the estate of the deceased. The property is not only required to be preserved but if the money can be raised by lending the same on leave and licence arrangement then in the said event the said money should be allowed to be raised and the money can be

utilised towards the huge tax liability which are pending of the said deceased. The contention of the learned counsel for the defendant no.1 that he was in possession of the property and therefore status-quo ante should be restored is required to be rejected, simply for the reason because the method and manner in which he is claiming to be in possession of the said property and purported claim of tenancy raised by him against the said deceased disentitles him from claiming any relief of any nature such whatsoever in Notice of Motion No. 2873. In the aforesaid circumstances of the case I am of the opinion that the court Receiver should be allowed to continue as receiver in respect of the said property. However I clarify that the receiver will invite bids for the said property for appointment as an agent and the same will be accepted on the basis of the highest bid received and the court receiver will appoint such highest bidder as an agent on the usual terms and conditions including of the security and royalty. In any event if the court receiver is of the opinion that such an agent has committed breach of

any of the terms and conditions of the agency under which he is appointed then in that event the court receiver shall be entitled to take necessary steps for the purpose of termination of such agency and appoint any other person by calling for fresh bids as an agent of the Court Receiver subject to the directions from this court. In that light of the matter in so far as prayer (b) is concerned I am of the opinion that the ad-interim order should be confirmed with the aforesaid additional directions and prayer (b) of the Notice of Motion 2873 of 2001 should be rejected.

15. Now this takes me to the next property of the deceased in respect of which there are serious contest namely, office premises situated at Famous Studio at Mahalaxmi, Bombay. There are also disputes in respect of cine equipments lying therein.

16. Both the plaintiffs and the defendants are seeking that these premises of Famous Studio be

handed over to them for the purpose of carrying on business from the said office premises and giving the said cine equipments on hire. In so far as the said premises are concerned, looking at the type of dispute between the parties in my opinion, it is not possible to permit either the plaintiff or the defendant no. 1 to use the said office premises situated at Famous Studio at Mahalaxmi, Bombay nor the equipments lying therein. At the same time said premises and the said equipments have to be utilised for the purpose of generating the income because keeping idle would also not be in the interest of the estate. In view thereof I am of the opinion that the Court Receiver, High Court, Bombay, should be appointed as Receiver in respect of said office premises situated at Unit No. 217-C, 256-A and 257 in Famous Cine Studio situated at Mahalaxmi, Bombay along with all the equipments and/or other items which are lying therein. The Court Receiver, High Court, Bombay is directed to make inventory of all the items lying in the said Studio and thereafter invite bids for the purpose of utilising the said office premises and for

utilising the equipments lying therein. The Court Receiver, High Court, Bombay is also empowered to give on hire the said equipments and if necessary utilise the fund from the estate of the deceased towards the servicing of the other equipments. The Court Receiver, High Court, Bombay is also directed to give the said equipments either along with the studio to third party who is the highest bidder or separately as the situation of the case may require. Such third party would be appointed as an agent of the Court Receiver of the said premises as well as the equipments lying therein and the same will be subject to the usual terms and conditions of the Receiver including that of security and royalty in that behalf. That both the plaintiff and defendant no. 1 are seeking that they should be allowed to carry on the business in respect of the said premises. I am of the opinion that considering the nature of disputes between the parties the best manner in which to protect the properties and at the same time generate income in respect thereof will be to appoint Court Receiver as aforesaid. In my opinion, thus the mode of

Court Receiver would serve the purpose and interest of justice between the parties and both the plaintiff and the defendant no. 1 would not be prejudiced in any manner whatsoever.

17. This leads me to the next premises, namely, ground floor flat in Bhagwan Niwas, 19th Road, Khar (West), Mumbai. The said premises is subject matter of Notice of Motion No. 2700 of 2000 as well as Notice of Motion No. 2873 of 2001. The prayer in the said motion in so far as it pertains to Bhagwan Niwas is concerned, is prayer (d). The said prayer in Notice of Motion No. 2873 of 2001 reads as under :-

"(d) that pending the hearing and final disposal of the Suit, Defendant No. 1 and Plaintiff be allowed to use the Flat at Bhagwan Niwas at Khar for his personal use and for his residence."

18. The plaintiff has filed a reply to the said

notice of motion sometime on or about 26.2.2004. While filing reply on 26.2.2004 in so far as the said flat is concerned, the plaintiff has stated as under :-

"I say that after the death of the deceased on 20-4-1999, I used to depute one of my Ralhan Production staff to visit Bhagwan Niwas Flat at Khar every day - for collecting mail. On 4th May 1999, I learnt from my staff that the deponent had tried to forcibly take possession of the said premises by breaking open the locks and replacing them. Further to this, the first Defendant had also posted a security guard at the said premises. I therefore lodged a complaint with the Khar Police Station on 5th May and 6th May 1999 in this regard. This Hon'ble Court by its Order dated 10-5-1999 in Testamentary Petition No. 535 of 1999 had directed the deponent not to use or occupy the said Flat. I have dealt with this aspect of Khar premises in Para 14 (i) 14 (v) and in prayer b (iii) - (hereto annexed and

marked Exhibit-10) - in the plaint of the said suit No. 3748 of 2000."

By making these averments, the plaintiff has deliberately suppressed from this Court various facts which are as under :-

1. By an order dated 10.5.1999 passed in Notice of Motion No. 1570 of 1999 and Notice of Motion No. 1455 of 1999 this Court had directed parties including the plaintiff herein to maintain complete status quo in respect of the properties which also included flat at Khar.
2. That the deceased during the life time was a monthly tenant in respect of the said flat and was carrying on business therefrom. In 1979 the landlord filed a suit for recovery of possession and arrears of rent in respect of the suit flat being Small Causes Court Suit No. RAE & R 975/3246/79.

3. By an order and judgment dated 13/14-3-1991 the said suit was decreed by the Small Causes Court.
4. An appeal was preferred against the said order being appeal No. 91 of 1991 before the appellate bench of the Small Causes Court. After the death of the deceased as on 20.4.1999 it seems that the plaintiff herein has surrendered his rights in the said flat by permitting execution of the said decree.
5. By letter dated 9.1.2004 the plaintiff's advocate has informed the defendant no. 1 that the said suit was decreed in favour of the landlord and appeal was filed and after losing in appeal, the plaintiff did not think it suitable to continue further proceedings and permitted the decree to be executed and in fact surrendered the said rights in respect of the said flat.

19. The aforesaid facts have not been disclosed by the plaintiff even though an affidavit has been filed much subsequently i.e. on 26.2.2004. When it is put to the learned counsel appearing for the plaintiff that why such facts pertaining to the Khar flat were not disclosed when notice of motion no. 2873 of 2001 in prayer (d) was seeking relief that the defendant no. 1 should be permitted to use the said flat. However, the learned counsel for the plaintiff stated that there is no answer to the same save and except that the reply was not to the notice of motion but to the affidavit in support thereof. Plainly speaking such an answer is not possible to be accepted. If the prayer is for occupation of the flat and the flat is not available any more then the least is expected from the plaintiff to state is that the said property is no more available and thus the question of granting prayer (d) does not arise. However, deliberately there is a clear suppression on the part of the plaintiff looking from the subsequent events which have been unfolded by the affidavits in

this proceedings. It is also clear that these suppressions are for serious reasons. The defendant no. 1 in the present case has produced a tape-recorded conversation and a transcript thereof is filed alongwith the affidavit dated 21.7.2005. The said affidavit contains the transcript of the said tape-recorded conversation and which inter alia on the relevant part reads as under :-

Ralhan: Acha to, beta vo, to bolte thee na,
ke mai ne mummy usko brokerage dai
de three...

Shah: Brokerage aap tabhe usko dena,
pehele aap bolo ke bhai, aap kya
kaha rahe ho, kuke unka upper hand
hai unke paas already property
achuke hai...

Ralhan: Ha

Shah: to aap logo ko genuinely vohe paisa

dene ko tayar hai ya nahi dene ko
tayar hai, pehele aap vo samjo.

Ralhan: Acha tereko ketana deya unhone?

Shah: Mere ko unhone officially chaar (4)
lakh deya.

Ralhan: Acha.

Shah: Etna deya unhone bus

Ralhan: Officially?

Shah: ha officially deya hai vo, aap
please unse samaj lo, aap, aur
officially aap ko bhe lena caheye....

Ralhan: Ha vo to leange

Shah: Ha bus, usko bolo please aap, aap
please samjo, aap samjao usko aur
bolo jo bhe hai, please usko bolo

barabar se kare aur mera bhe cheque
tabhe release hoga jab aap logo ka
saab settle hoyega, thabi uske leye,
vo cheque pada hua hai uske lawyer
ke pas he ...

Gandhi : Aap dusare meri bath suno...

Ralhan: Ji.

Gandhi: hum ne Rupali ko paisa diya, aap ko
he deya, two bedroom flat ka aur
dusra usko bhe deya, to hum ko ye
flat ke against, jo Shetty ko diya
us se jaste dena pada app logo ko,
teeno milake ...

Ralhan: Haan Ji, dhekeye jo bath aapas me...

Gandhi: Suno...

Ralhan: Aap lawyer hai..

Gandhi: Nahi nahi aap lawyer ke bath chodo.
Aap ko, Rupali ko, abhe aap ko bees
(20) deyega, Court me bees (20) lakh
Kharcha keya, - Chalees (40), Rupali
ko pachees (25) deya ..

Ralhan: Haan ji.

Gandhi : sorry pachees, whatever dedeya...

Ralhan: Nahi.

Gandhi: aur dusara kharcha keya, saab melake
usko core hojata, two bedroom flat
ka core Rupaia bahut jada keya.....

Ralhan: Dhekeye meri bath suneye, aap bhe
lawyer hai, mai bhe lawyer se bath...

Gandhi: Aap ko..

Ralhan: Dheko meri bath suno, jab bhe mereko
lawyer bolta hai, stay order mai ne

leya hua hai....

Gandhi: Mai jada bath nahi koe, muje
instructions koe hai nahi, jo mai ne
bath keya aaap ke son ko....

Ralhan: Haan ji

Gandhi: Aap ko chaheye..."

The aforesaid conversation prima facie indicates that there is not merely an execution of a decree of eviction in so far as the said flat is concerned but there has been also settlement between the plaintiffs and the said builder for surrendering of the said tenancy. This also indicates that the so called purported contention raised by the plaintiff that they did not challenge the order of the Small Causes Court Appellate Bench because they are advised not to do so in view of concurrent findings of facts is far from the truth. It also indicates that there has been a dealing in so far as the said flat is concerned during the pendency of the present suit and

in breach of the status quo order passed by this court. It also indicates that the decree of the Court of Small Causes was only merely used for surrendering the flat to the said landlord. Not only that the said flat is surrendered but the builder thereafter has demolished the same for construction of a new building. Thus the said flat is lost and no more forms a part of the estate of the deceased. The learned counsel for the plaintiff did not dispute the fact that there were negotiations and that there was a conversation with the builder for surrender of the said flat. However, the learned counsel for the plaintiff states that the said conversation should not be taken into consideration firstly because according to him the said tape has been tampered with where the figure of Rs. 24 lacs is mentioned therein by the plaintiff. According to the learned counsel the tape is so tampered that the amount of Rs.4 lakhs is changed to Rs.24 lakhs. He states that in view of the said fact, the said tape ought not to be taken into consideration. He further relied upon the judgment of the Apex Court in the case of Manabir Prasad v. Dr. Surinder Kaur reported in AIR 1982 SC

1043 and the judgment of the Apex court in the case of Yusufalli Esmail Nagree vs. The State of Maharashtra reported in AIR 1968 SC 147 and the judgment of the learned Single Judge of this Court in the case of Chandrakant Ratilal Mehta and others v. The State of Maharashtra reported in 1993 Cri.L.J. 2863 and has contended that the Apex Court as well as this Court has held that the tape recorded evidence cannot be accepted unless the necessary safeguards about the authenticity of the tape conversation is taken into consideration and there are also corroborative evidence in existence. He has further contended that thus in light of the aforesaid situation it is not open for this Court to accept the tape recorded conversation at the inter-locutory stage of the hearing and thus the plaintiff says that I must ignore the said tape recorded conversation in so far as the said transcript is concerned. I am not inclined to accept the contention of the learned counsel for the plaintiff. The tape recorded conversation is required to be considered particularly in the light of the fact that it is not disputed by the plaintiff that negotiations were

carried out by the plaintiff for the purpose of receiving money in respect of the said flat. Furthermore, it is also not disputed by the plaintiff that in fact such a conversation as recorded in the tape did take place. The only issue sought to be raised is that there was a likelihood of tampering of the tape where the figures are mentioned. I am not inclined to accept such a contention on the part of the plaintiff at this stage. I am of the opinion that the conduct of the plaintiff is totally contrary to the orders passed by this Court particularly an order of maintenance of status quo. It is prima-facie clear that the process of the Court has been used by the plaintiff for the purpose of receiving benefits by surrendering of the said flat. These facts are very essential and most important in the light of the fact that the plaintiff has not disclosed in her affidavit even the decree or the Small Causes Court proceedings or the fact of having lost the possession of the said flat even in the affidavit filed as late as in February 2004. It is thus clear that there is a suppression of the material facts pertaining to this flat which is very

calculated and with the intention to mislead this Court so as to keep the court dark of surrender of such a flat I am of the prima facie opinion that the plaintiff has committed contempt by suppressing material facts in affidavit dated 26.2.2004 and by entering into negotiations for surrender of the flat in breach of the status quo order passed by this Court in Notice of Motion No. 1455 of 1999. Thus, in my opinion, necessary action is required to be taken which I propose to take while passing the operative order in the present case. In so far as the judgments of the Apex court and of this Court which are cited before me are concerned it is very important to note that the said judgments are in criminal proceedings at the final hearing stage. Today I am only at a prima facie stage and thus the degree of evidence is different and therefore the said judgments are not very relevant at this stage of the proceedings. Furthermore, even without considering the tape conversation it is clear that there is a deliberate suppression of facts by the plaintiff in respect of this flat and therefore also there is a prima facie contempt on the part of the

plaintiff herein.

20. This leads me to the next set of assets of the deceased namely, copyrights in various films. It is an admitted position that pursuant to the ad-interim order passed in the present proceedings, the plaintiff has entered into an agreement with Shemaroo Video Pvt. Ltd., for exhibition of the said copyright. The plaintiff has granted the said copyright to the said company. The agreement is upto 2008. Under the said agreement admittedly the plaintiff has received a sum of Rs. 75 lacs. This amount the plaintiff has neither deposited in this Court nor paid to any creditors and has illegally and unlawfully retained with herself. In fact the said amount which was received from exploitation of the said films ought to have been deposited in this Court or ought to have been paid towards the discharge of the liability of the Income-tax Authorities as provided for under the ad-interim order. However, the learned counsel for the plaintiff states that the amount was not paid over to the Income-tax Authorities because the plaintiff was in the process

of one time settlement and once the settlement is arrived at the plaintiff was to make the aforesaid payment. In such case the money ought to have been deposited in this Court which also the plaintiff has not done. In view of the fact that the learned counsel for the plaintiff states that they are willing to deposit the said sum of Rs. 75 lacs in this Court, I do not propose to pass any order save and except that I direct the plaintiff to deposit Rs. 75 lacs in this Court within a period of two weeks from the date of this order. I further direct that the agreement with Shemaroo Video Pvt. Ltd., coming to an end the plaintiff will surrender all the films to the Court Receiver, High Court, Bombay and thereafter the Court Receiver, High Court, Bombay shall exploit the said films by giving copyright for further distribution if and so found necessary and required. It is clarified that the plaintiff will have no right whatsoever to create any further copyright in favour of Shemaroo Video Pvt. Ltd., or any other party at all and the Court Receiver shall stand appointed on the completion of the said agreement in respect of the said films which are

given for exploitation to the said Shemaroo Video Pvt. Ltd.,

21. This leads me to remaining assets of the deceased.

22. In so far as the property, namely, the land with trees bearing Gat No. 117 admeasuring 3 hactre, 56 R, situated at village Deharjee, Khar, Taluka Jawahar, Dist. Thane, Maharashtra is concerned, which is described in Exhibit A to Suit No. 2606 of 1999 and has been subject matter of Notice of Motion No. 1455 of 199, the learned counsel for the plaintiff has made a statement that the said property is not in possession of the plaintiff. He has further stated that there was a mere agreement for sale in respect of the said laid from the vendor. The said agreement is not completed and the vendor continues to be in possession of the said premises and, therefore, no order can be passed in respect thereof.

23. In so far as the bank accounts of the said

deceased as described in Exhibit A to the plaint i.e. Suit No. 2606 of 1999 are concerned, each of the said bank is directed to deposit in this court if any amount is lying with them deposited in the name of the deceased solely or with any other person and such amount if any, to be deposited with the office of the Prothonotary and Senior Master, High Court, Bombay. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

24. Various other prayers which are made in Notice of Motion No. 2873 of 2001 pertaining to the utilisation of the trade name and/or to administer the estate by the defendant no. 1 and/or prayer (b) on the basis of alleged store articles, it is not possible to pass any interim orders at this stage save and except the other interim orders of other prayers made in notice of motion stand rejected.

25. Notice of motion no. 2700 of 2000, notice

of motion no. 2873 of 2001 and notice of motion no. 1455 of 1999 stand disposed of accordingly. However, there shall be no order as to costs.

26. Issue notice to the plaintiffs to show cause why an action should not be taken for contempt of court under the provisions of Contempt of Court Act read with Article 215 of the Constitution of India and for the breach of the order of status quo dated 10.5.1999 in notice of motion no. 1455 of 1999 for the reasons set out herein above

SD/-
